

**FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS
WORKSHOP**

SUBJECT: Presentation of a Memorandum of Understanding Between Flagler County and the Guana Tolomato Matanzas National Estuarine Research Reserve Relating to Cost Sharing for Cottages Within Princess Place Preserve.

DATE OF MEETING: December 15, 2014

OVERVIEW/SUMMARY: Flagler County and the Guana Tolomato Matanzas National Estuarine Research Reserve (NERR) mutually have a desire to provide overnight lodging accommodations within Princess Place Preserve. Flagler County sees this as an opportunity to continue to grow its ecotourism and the NERR views this as an opportunity to provide lodging for researchers in close proximity to their study sites. As a result of this mutual desire and in pursuit of common goals certain cost sharing arrangements have been discussed. For the NERR, these cottages provide an opportunity to house visiting scientific investigators, enabling them to have more time on site for research into the ecological effect of changes from saltmarsh habitats to mangrove habitats. This fits the NERR's mission as this study area has been identified by the National Oceanic and Atmospheric Association's (NOAA) Oceans and Coasts Indicators Technical Team as a priority research need. The cottage's utilization by scientists has been considered juxtaposed with Flagler County desire to ensure tourists can utilize these facilities during high visitor periods. The parties have mutually developed a draft Memorandum of Understanding (MOU) outlining the project particulars. The following conditions are captured within the MOU.

Location and number

The proposed cottages are to be located west of the historic caretakers residence and along Pellicer Creek. This location is outside of the Cherokee Grove area identified on the County's National Register of Historic Places listing for Princess Place Preserve. Three cottages are planned at this time. Care will be taken to integrate the structures into the environment, taking care to leave the tree canopy intact, maintain the aesthetic value of the area, as well as minimize any disturbance to the shoreline vegetation. The cottages will be constructed using environmentally conscious materials and will be designed to meet environmental building certifications (LEEDS, Waterstar, etc.).

Funding

Flagler and the NERR have agreed to share the cost of construction of the cottages. The NERR will be providing financial contributions towards the cottage construction with \$60,000 from the Florida Department of Environmental Protection. The schedule for release of these funds has not been finalized, with the FDEP still deliberating whether

all funds are available now or 50% this fiscal year and 50% next fiscal year. The NERR will also be providing \$346,000, available September 1st, from NOAA.

Flagler County is proposing to commit up to \$120,000 in labor and equipment in addition to supplying the land for the project.

Use and Priority

As previously mentioned Flagler County and the NERR have discussed the scientific investigators and tourists prioritization for use. Flagler County and the NERR have created a schedule and booking prioritization based upon school (high school and college), special events and holiday schedules, as well as a maximum allotment of days the NERR may reserve. The NERR would receive up to 140 days per cottage for a maximum annual total of up to 420 days per year. The cottage's peak season is considered March – September and off-peak is October – February.

Peak Season is considered from March – September and Off Peak Season is considered October – February. Of the days allocated to the FDEP up to half can be in peak season (210). More than half can be in off-peak season. Reservations for the cottages will be set up in 6 month blocks based on Peak and Off Peak Seasons and Rates. It will generally occur in the following schedule:

<u>FDEP Pre-booking</u>	<u>Public Booking</u>	<u>Occupancy Period</u>
September – November	December- February	March – August
March – May	June – August	September - February

Special Booking Periods would be as follows:

1. Spring Break - We would generally split the month of March to accommodate spring break for colleges (NERR) and high schools (County). The first two weeks of March, 2 out of 3 cottage's priority would go to the GTM NERR through pre-booking. For this period, the two cottage's pre-booking period for would be extended until January 15th. The last two weeks of March, 2 out of 3 cottage's priority would go to the County. GTM NERR could only get one cottage with a discount through the GTM NERR pre-booking period.

2. "Peak of the Peak Period" - June 1 – August 15 - For this period the concept is that the County and GTM NERR will attempt to equally split the available days. The reservation process for this period will be slightly altered to accommodate this goal as long as possible, while working to ensure rooms are filled to the greatest extent possible. It will work in the following manner:

a. Cottage One – This will be totally open to the public during this period for booking with no GTM NERR booking.

b. Cottage Two – Pre-booking during the pre-booking period will be allowed for the GTM NERR for up to 50% of the dates with the exception of the July 3rd -5th. After pre-booking, the spaces will be made available to the public. If the GTM NERR is not up to 50% of the reservations through pre-booking, later reservations could still be made with the discount if available after the pre-booking period.

c. Cottage Three – This cottage will be primarily dedicated to the GTM NERR during this period. If any GTM NERR pre-booking conflicts with the pre-booking of Cottage 2, or if over 50% of Cottage two is booked, any additional pre-booking will be booked with this cottage. After the pre-booking period the rooms would not be made immediately available to the public. Rooms not pre-booked would remain blocked for GTM NERR usage until 2 months ahead of check-in. At that time, if not booked, they would be made available to public in monthly blocks. For example, for booking the month of June, an extra month would remain blocked for public booking until March 31st. This would allow April and May for public booking. Again, reservations for June after March 31st could still be made with the discount, if the cottage is still available. This would carry through for July, which would remain blocked until April 30th and for the first half of August, this would remain blocked until May 31st.

3. Special Dates - The NERR would not pay extra for any special dates. However, the NERR would be permitted to pre-book only one cottage during these dates making 2 of the 3 cottages available to the public at public rates. Some special dates change from time to time. Below is a listing of the special dates as they would apply for 2014, although operationally the project is not expected to be online until sometime in 2015. Some will change slightly year to year, others would not. However, they will be known well in advance of pre-booking.

<u>2014 DATES</u>	<u>EVENT</u>
January 25-26	Rolex 500
February 21-23	Daytona 500 – Speed Week Th F S
March 17-24	Bike Week(s)
May 24-26	Memorial Day Weekend (S,S,M)
July 3-5	Fourth of July Holiday (Th,F,S)
August 30-September 1	Labor Day Weekend (S,S,M)
October 11-12	Creekside Festival (S,S)
October 16-19	Biketoberfest
November 8-10	Veterans Day Weekend (S,S,M)
November 23-29	Thanksgiving Week Mon-Sun
December 21-Jan. 3	Christmas/New Year’s Week

Reservation Reserve and Deposits - 50% of the reservation costs will be required to reserve room nights. The reservation balance plus a deposit will be due prior to occupancy.

If the preceding MOU criteria is acceptable to the Board staff will ask for the Board's authorization to execute the document.

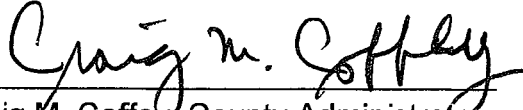
DEPT./CONTACT/PHONE #: Land Management / Tim Telfer / 386-313-4066

ATTACHMENTS:

- 1. Maps
- 2. Memorandum of Understanding



Tim Telfer, Natural Resources Manager



Craig M. Coffey, County Administrator

12/12/2014
Date

12 DEC 2014
Date

MEMORANDUM OF UNDERSTANDING

BETWEEN

FLAGLER COUNTY

AND

GUANA TOLOMATO MATANZAS NATIONAL ESTUARINE RESEARCH RESERVE

This Memorandum of Understanding (MOU) is entered into by and between the Flagler County Board of County Commissioners ("County"), the Guana Tolomato Matanzas National Estuarine Research Reserve ("GTM NERR"), collectively referred to as "the Parties". It is understood that the Friends of the Guana Tolomato Matanzas National Estuarine Research Reserve, Inc. ("Friends") is a beneficiary to this MOU via the GTM NERR. For all matters related to the GTM NERR or Friends under this agreement the GTM NERR will serve as the representative Party. This MOU is intended to establish the terms and understanding of the booking procedures, timing, and rates of the three visiting investigator/ eco-tourism cottages at Princess Place Preserve. These three cottages are intended to be utilized for public nature tourism as well as provide space for visiting researchers' needs. Nature tourism is compatible with the Princess Place Preserve management plan as well as the fact that construction funds provided by the FDEP were intended to be used for nature tourism purposes. This MOU will serve to memorialize the terms and conditions discussed over time between the Parties regarding project commitments, rates, and reservation procedures.

I. BACKGROUND

The coastal estuaries of Flagler County are within a county Coastal Greenway system that runs continuously from the north border of Flagler County at Marineland to the Volusia County line and North Peninsula State Park. Flagler received the Greenway Award from 1000 Friends of Florida in 1994 for this effort. The County has invested substantial resources in protecting the coastal estuaries.

The County's coastal estuary protection extends from the coastal area on the ocean to the west along the Pellicer Creek Aquatic Preserve where the County has acquired the entire upland property along Pellicer Creek located in Flagler County. This is the only OFW whose uplands along a county's boundaries are in complete public ownership. This means that in the north end of Flagler County, the Greenway extends seven miles from the ocean to the west and then proceeds to the south along the coast for 19 continuous miles in large stands of hardwood hammock forest and coastal scrub.

In 1999, the GTM NERR was designated in St. Johns and Flagler counties, Florida as a part of the National Oceanic and Atmospheric Administration (NOAA) National Estuarine Research Reserve (NERR) system because of its outstanding representation of the east Florida sub-region of the Carolinian bioregion and its unique combination of natural and cultural resources. It covers 74,000 acres of coastal lands in northeast Florida from Ponte Vedra Beach to Palm Coast. The Reserve is comprised of salt marsh and mangrove tidal wetlands, oyster bars, estuarine lagoons, as well as several upland habitats. The GTM NERR is part of a national system of research reserves that focus on research, education and stewardship. As one of the 28 reserves in the National Estuarine Research Reserve system, the Research Team at GTM NERR is charged with implementing national, long-term research programs, investigating regional and scientific topics, and facilitating scientists and students who conduct their research in the myriad habitats within the reserve. The GTM NERR is a component of the Florida Department of Environmental Protection's Florida Coastal Office (FDEP FCO).

The Friends of GTM NERR are a private non-profit citizen organization established to support and enhance environmental education, stewardship of natural and cultural resources, and scientific research of the GTM NERR through volunteer initiatives, citizen involvement, and community partnerships.

These efforts in the aggregate have protected water quality and habitat and have lessened the potentially adverse effects of having these properties develop. Flagler County was fortunate to learn from more urbanized and suburbanized areas along the coast that it was better to capture these properties in the public interest when real estate prices were relatively low and state subsidies were relatively high. It is worth noting that Flagler citizens in 1988, then a relatively small population of 27,000, passed a property tax millage generating revenues to purchase environmentally sensitive lands. The citizens of Flagler, even with its stunning population growth rate, voted two more times to renew the program with ad valorem tax millage. The most recent public referendum passed in 2008 when the county was already clearly in a recession.

To support both scientific research of these ecosystems and to promote tourism of environmentally conscious visitors, Flagler County, the GTM NERR, and the Friends have conceived of three cottages located within the GTM NERR's boundary, on County land, which could house visiting scientific investigators and tourists alike. The cottages considered herein would allow visiting investigators more time on site for research and analysis. Understanding the ecological effect of changes from saltmarsh habitats to mangrove habitats has been identified by NOAA Oceans and Coasts Indicators Technical Team as a priority research need. When not used by investigators, these cottages will be in high demand by visitors who wish to

experience immersion in a pristine natural setting while enjoying certain comforts that cottages provide.

II. BUDGET RECITALS

The Parties agree to the following:

- The GTM NERR has received approval to expend state funds for the construction of the cottages. On July 1st, 2014 \$60,000 was allocated to the GTM NERR and will be made available through the FDEP Florida Coastal Office (FCO) using an approved fund transfer process. Documentation of these costs and expenditures will be required as part of the reimbursement process.
- The GTM NERR has been notified that it has been awarded federal funding for this project. On or about October 1st, 2014 the National Oceanic and Atmospheric Association is expected to authorize (through a contractual agreement with FDEP FCO) \$390,000 for the cottage and \$16,000 for associated research mesocosms. Documentation of these costs and expenditures will be required as part of the reimbursement process.
- Flagler County has committed to providing \$120,000 of in-kind value through labor, cash, equipment, and oversight during the construction of the investigator facilities. The land value is estimated at \$100,000 for a total of \$220,000 in County Match. Documentation of these costs and expenditures will be required as part of the reimbursement process.

III. COTTAGES OPERATIONAL UNDERSTANDING

General Statement of Cooperation and Future Modifications – With this project the Parties are entering relatively new territory for the County and GTM NERR. The parties have laid out these operational understandings in a good faith attempt to ensure the project meets the various interests of the parties to include research availability, public tourism usage, longevity and self-funding operations to name a few. It is understood that the operations protocols laid out today will likely evolve over time and that everyone will need to operate in good faith to ensure this quality working relationship and these cooperative attitudes carry forward even after the players of today change. Any future changes in this MOU will require mutual consent of the County and the GTM NERR.

Number of Days – The Friends (representing the GTM NERR and FDEP FCO interests) would receive up to 140 preferred rate days per cottage for a maximum annual total of up to 420 days per year. The preferred rates will be according to the beginning fee schedule in table 1. It is understood that these initial rates are subject to change in response to economic trends and

will be revised annually as needed upon mutual approval. GTM NERR rate increases will be capped to a total \$5 increase over each 4 year period unless otherwise approved by the GTM NERR. One cottage may have more than 140 days as long as the total booking allotment of 420 days is not exceeded. The Friends would have a minimum of 345 days at the preferred rates. The FDEP FCO will have the opportunity to reserve 75 days at the preferred rate in accordance to the guidelines established for the Friends.

Table 1: GTM NERR Preferred Rate	
Off-Peak	
Weekdays	50
Weekends	60
Weekly	335
Special Booking Weekdays	60
Special Booking weekends	70
Special Booking Weekly	405
Peak	
Weekdays	60
Weekends	70
Weekly	390
Special Booking Weekdays	70

Peak Season and Off Season – Peak Season is considered from March – September and Off Peak Season is considered October – February. Of the preferred rate days allocated to the Friends up to half can be in peak season (210). More than half can be in the off-peak season.

Usage – It is generally understood that the Friends reservations would be for research and education in support of GTM NERR management with the exception of some fundraising opportunities for GTM NERR. For example the Friends may set up this fundraising usage for approximately 30 stays as a fundraising effort. The bookings would be expected to follow these general guidelines to avoid personal or private vacation bookings with a public subsidy rate.

Reservations and Pre-booking – Reservations for the cottages will be set up in 6 month blocks based on Peak and Off Peak Seasons and Rates. It will generally occur in the following schedule:

<u>Friends Pre-booking</u>	<u>Public Booking</u>	<u>Occupancy Period</u>
September – November	December- February	March – August

March – May

June – August

September - February

Reservations for the GTM NERR and FDEP FCO will be coordinated through the Friends and be submitted by the Friends directly to County staff. These reservations would get advance bookings for at least 3 months prior to the period being opened to the public and in some cases longer (see special booking periods below). After the pre-booking period ends the facilities would be made available to the public booking. GTM NERR regular booking can resume 30 days after the end of the pre-booking period, except for the special booking periods which will not have this 30 day period.

Special Booking Periods

1. Spring Break - March would be split to accommodate the spring break schedules of universities, colleges, and high schools (County).

The first two weeks of March, 2 out of 3 cottage's priority would go to the GTM NERR through pre-booking. For this period, the two cottage's pre-booking period would be extended until January 15th.

The last two weeks of March, 2 out of 3 cottage's priority would go to the County for nature tourism. GTM NERR could only get one cottage with a discount through the GTM NERR pre-booking period.

2. "Peak of the Peak Period" - June 1 – August 15 - For this period the County and GTM NERR will attempt to equally split the available days. The reservation process for this period will be slightly altered to accommodate this goal as long as possible, while working to ensure cottages are filled to the greatest extent possible. It will work in the following manner:

a. Cottage One – This will be totally open to the public during this period for booking with no GTM NERR booking.

b. Cottage Two – Pre-booking during the pre-booking period will be allowed for the GTM NERR for up to 50% of the dates with the exception of the period July 3rd -5th. After pre-booking, the spaces will be made available to the public. If the GTM NERR is not up to 50% of the reservations through pre-booking, later reservations could still be made with the discount if available after the pre-booking period.

c. Cottage Three – This cottage will be primarily dedicated to the GTM NERR during this period. If any GTM NERR pre-booking conflicts with the pre-booking of Cottage Two, or if over 50% of Cottage Two is booked, any additional pre-booking will be booked with this cottage. After the pre-booking period the cottages would not be made immediately available to the public. Rooms not pre-booked would remain blocked for GTM NERR usage until 2 months ahead of

check-in. At that time, if not booked, they would be made available to public in monthly blocks. For example, for booking the month of June, an extra month would remain blocked for public booking until March 31st. This would allow April and May for public booking. Again, reservations for June after March 31st could still be made with the discount, if the cottage is still available. This would carry through for July, which would remain blocked until April 30th and for the first half of August, this would remain blocked until May 31st.

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<u>2014 DATES</u>	<u>EVENT</u>
January 25-26	Rolex 500 (Sa, Su)
February 21-23	Daytona 500 – Speed Week (Th, Fr, Sa)
March 17-24	Bike Week(s) (Mo through Mo)
May 24-26	Memorial Day Weekend (Sa,Su,Mo)
July 3-5	Fourth of July Holiday (Th, Fr, Sa)
August 30-September 1	Labor Day Weekend (Sa,Su,Mo)
October 11-12	Creekside Festival (Sa,Su)
October 16-19	Biketoberfest (Th, Fr, Sa, Su)
November 8-10	Veterans Day Weekend (Sa, Su, Mo)
November 23-29	Thanksgiving Week (Mo through –Su)
December 21-Jan. 3	Christmas/New Year’s Weeks (Su through Sa, 14 days)

Reservation Reserve and Deposits - 50% of the reservation costs will be required to reserve cottage nights. The reservation balance plus a deposit will be due prior to occupancy.

Adjustment/Cancellations Policy:

12-11-2014

One free adjustment of dates will be permitted per reservation. The adjustment must be for greater than 30 days. After that \$15 administrative fee may be charged.

Full or Partial Cancellation 2 months (more than 60 days) in Advance of Check-in Date - 100% refund of any portion of reservation canceled less a \$15 administrative fee.

Full or Partial Cancellation 1 month (30-59 days) in Advance of Check-in Date - 90% refund of any portion of total reservation canceled, we retain 10% of total reservation or \$50 administrative fee whichever is greater.

Full or Partial Cancellation Less than 30 days in Advance of Check-in Date - 75% refund of any portion of reservation canceled, 25% of total reservation is retained or \$100 administrative fee whichever is greater. If the cottage is able to be re-rented fully, we will only retain a \$50 administrative fee.

After Check-In, any canceled nights will be 50% refunded.

Maintenance, Upkeep, Housekeeping

Maintenance, upkeep, and housekeeping for the eco-cottages is the responsibility of Flagler County.

It is agreed that in return for their role in construction, ownership of the land where the cottages will be located, and assuming responsibility for maintenance, upkeep, and housekeeping for the eco-cottages, the County will receive \$390,000 in state and federal funding toward planning and construction of the cottages. The Friends, in recognition of the work and funding coordinated on their behalf and that of GTM NERR will receive discounted rates according to Table 1 and will have the ability to rent the cottages as a dorm with multiple occupants not to exceed six people and use the additional rental fees to support the GTM NERR programs. All Friends issues related to this MOU will be coordinated through the GTM NERR.

IV. GENERAL TERMS AND CONDITIONS

All terms and conditions verbally agreed to and/or stated in this MOU are subject to approval by the Flagler County Board of County Commissioners and GTM NERR. All Friends issues related to this MOU will be coordinated through the GTM NERR.

1. Term.

It is understood and agreed that the relationship established by this Agreement is meant to be for the benefit of both Parties, and that this Agreement shall be effective on the date of

execution by both Parties and shall remain in effect until terminated, suspended or modified in writing by an appropriate amendment executed by both Parties. The Term of this Memorandum of Understanding shall be for a Term of twenty (20) years.

2. Termination by mutual consent.

This Memorandum of Understanding may be terminated, in whole or in part, without cause by mutual consent of both the Parties upon sixty (60) calendar days written notice to the other Parties.

3. Default.

In the event that either Party becomes aware of a violation of the terms of this Memorandum of Understanding, the Party shall give Notice to the Party in Default in accordance with the Notice provisions of this section ("Notice of Violation"). Upon receiving the Notice of Violation, the Party who has committed the violation shall initiate curative action within fifteen (15) days of receipt of the Notice of Violation and shall discontinue, abate, or cure the violations within thirty (30) days after receipt of the Notice of Violation, or a longer period of time if provided for in the Notice of Violation.

In the event that the violations is not discontinued, abated, or cured within the time provided in the preceding paragraph or by the Notice of Violation, the noticing Party shall be entitled to bring an action at law or in equity before a court of competent jurisdiction to: (i) enforce the terms of this Memorandum of Understanding; (ii) recover liquidated damages ; (iii) enjoin such noncompliance by a temporary or permanent injunction in a court of competent jurisdiction; (iv) seek a mandatory injunction in a court of competent jurisdiction to compel the violating Party to take such corrective action as required to remedy the violation; and/or (v) recover any damages arising from noncompliance with this Memorandum of Understanding. Neither Party waives or forfeits their right to take such action as may be necessary to ensure compliance with this Memorandum of Understanding by any prior failure to act.

4. Contacts.

The principal contacts for this instrument are:

<i>Flagler County Board of County Commissioners</i>	<i>GTM NERR</i>
Attn: County Administrator	Attn: Director

<p>1769 E. Moody Boulevard, Building 2 Bunnell, FL 31110 Phone: 386-313-4001 Fax: 386-313-4101</p>	<p>505 Guana River Road Ponte Vedra Beach, FL 32082 Phone: (904)-823-4500 Fax: (904) 825-6829</p>
<p>E-Mail: ccoffey@flaglercounty.org</p>	<p>E-Mail: Michael.Shirley@dep.state.fl.us</p>

5. Notices.

Any notices, demand, request or other instrument which may be or is required to be given under this Memorandum of Understanding shall be delivered in person, sent by United States Certified mail, postage prepaid, or sent by a reputable overnight courier service and shall be addressed to each of the Parties at the address as hereinabove given. Any notice shall be deemed delivered upon hand delivery or three (3) business days after depositing in U.S. Mail, or one (1) business day after depositing such notice with a reputable overnight courier service. Any of the Parties may designate another address by giving written notice to the other PARTY. It is understood by the Parties that routine and non-agreement related communication will occur telephonically, via email and in person.

6. Amendments.

Amendments may only be made by the mutual consent of the parties with the same formality by which the original Memorandum of Understanding was approved.

7. Public Records.

All records in conjunction with this Agreement shall be public records in accordance with the laws applicable to the parties.

8. Applicable Law/Venue.

This Memorandum of Understanding, the rights and obligations of the Parties hereto, and any claim or dispute relating thereto shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Florida. The exclusive venue for enforcement or interpretation of this Memorandum of Understanding is the Circuit Court of the Seventh Judicial Circuit in and for Flagler County, Florida.

9. Successors and Assigns.

Except as otherwise expressly provided, all provisions herein shall be binding upon and shall inure to the benefit of the Parties, their legal representatives, successors and assigns. This Memorandum of Understanding shall not be assigned without written consent of the County.

10. Entire Agreement.

This Memorandum of Understanding and any Exhibits attached hereto constitute the entire agreement between the Parties. Any prior conversations or writings are merged herein and extinguished.

11. Partial Invalidity/Severability.

If any provision of this Memorandum of Understanding, or any application thereof to any person or circumstances shall to any extent be declared invalid, the remainder of this Memorandum of Understanding or the application of such provision to persons or circumstances (other than those as to which it is held invalid) shall not be affected thereby and each provision of this Memorandum of Understanding shall be valid and enforced to the fullest extent permitted by law.

12. No Partnership.

Nothing contained in this Memorandum of Understanding shall be deemed or construed so as to create the relationship of employer-employee, principal-agent, joint ventures, co-adventurers, or partners between COUNTY, GTM NERR, and the Friends, and they are and shall remain independent one as to the other.

13. No Third-Party Beneficiaries

Nothing set forth herein shall be construed to give any rights or benefits in this Agreement to anyone other than COUNTY, GTM NERR, and the Friends, and all duties and responsibilities undertaken pursuant to this Memorandum of Understanding will be for the sole and exclusive benefit of COUNTY, GTM NERR, and the Friends and not for the benefit of any other party.

14. Counterparts

This Memorandum of Understanding may be executed in three or more counterparts, each of which may be executed by one or more of the Parties hereto, but all of which, when delivered and taken together, shall constitute but one agreement binding upon all of the Parties hereto.

15. Non-Exclusivity/Exclusivity

Nothing contained herein shall restrict either of the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.

16. Interpretation

This Memorandum of Understanding shall not be construed more strictly against one of the Parties than against the others merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that COUNTY and GTM NERR have contributed substantially and materially to the preparation hereof.

17. Force Majeure

No party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by force majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, fire, flood, wind, earthquake, terrorism, hurricane, explosion, any emergency declaration under state law, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause whether or not enumerated in this Section is beyond the control and authority and without the fault or negligence of the party seeking relief under this Section.

18. Binding Authority

Each party hereto represents to the other that it has undertaken all necessary actions to execute this Memorandum of Understanding, and that it has the legal authority to enter into this Memorandum of Understanding and to undertake all obligations imposed on it.

19. Captions

The headings or captions of the sections and subsections contained herein are used for convenience and reference only, and do not, in themselves, have any legal significance and shall not be afforded any. They are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Memorandum of Understanding, or any provision hereto.

20. Liability

Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However nothing herein shall constitute a waiver by either party of sovereign immunity or statutory limitations on liability.

[SIGNATURES ON FOLLOWING PAGE]

12-11-2014

IN WITNESS WHEREOF, the Parties represent their intent on the date set forth below:

COUNTY:

FLAGLER COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____

Craig Coffey

Flagler County Administrator

Date of Execution: _____

GTM NERR:

By: _____

Dr. Michael Shirley

GTM NERR Director

Date of Execution: _____